



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 204

[Docket No. FR-6051-A-01]

Federal Housing Administration (FHA): Single-Family Loan Sale Program; Advance Notice of Proposed Rulemaking and Request for Public Comment

AGENCY: Office of the Assistant Secretary for Housing – Federal Housing Commissioner, HUD.

ACTION: Advance Notice of Proposed Rulemaking and Request for Public Comment.

SUMMARY: This notice seeks comments regarding FHA’s Single-Family Loan Sale Program (the Program). The Program has been operating under demonstration and general disposition authority, through which eligible, single-family mortgage loans assigned to FHA in exchange for claim payment and mortgage notes are sold competitively to maximize recoveries and strengthen the FHA Mutual Mortgage Insurance Fund (“MMIF”). FHA is seeking comments from the public to improve program practices and procedures as FHA transitions the Program from a demonstration to a permanent program. FHA will consider the comments submitted in developing a permanent program for assigning defaulted Single-Family mortgage loans to FHA and disposing of the assigned loans through loan sales.

DATES: Comment Due Date: Written comments must be received on or before **[INSERT 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit comments regarding this notice.

Comments should refer to the above docket number and title. There are two methods for submitting comment.

1. Submission of comments by mail: Comments may be submitted by mail to the HUD Regulations Division, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410-8000; telephone: (202) 708-2625 (this is not a toll-free number), or toll free (800) 481-9895. Hearing- or speech-impaired individuals may access these numbers through TTY by calling the Federal Relay Service at (800) 877-8339 (this is a toll-free number).

2. Electronic submission of comments: Comments may be submitted electronically through the Federal eRulemaking Portal at www.regulations.gov. FHA strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by FHA, and enables FHA to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of this notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

3. Public inspection of public comments: All properly submitted comments and communications submitted to FHA will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at (202) 402-5731 (this is not a toll-free number).

Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: John Lucey, Director, FHA Office of Asset Sales, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410-8000; telephone: (202) 708-2625 (this is not a toll-free number), or toll-free: (800) 481-9895. Hearing- or speech-impaired individuals may access these numbers through TTY by calling the Federal Relay Service at: (800) 877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Since 2002, FHA has operated a demonstration program to implement the general authority under section 204 of the National Housing Act, 12 U.S.C. 1710, as amended by section 601 of the Fiscal Year 1999 Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. No. 105-276, approved October 21, 1998) (“FY 1999 Appropriations Act”). Section 601 of the FY 1999 Appropriations Act amended section 204 to make more effective the methods for paying insurance claims and disposing of FHA-acquired single family mortgages and properties.¹ Over the years, FHA has adopted various names to refer to this demonstration, including the Accelerated Claim and Asset Disposition (ACD) Demonstration, the Single Family Loan Sales (“SFLS”) Program, and the Distressed Asset Stabilization Program (“DASP”). Nonetheless, FHA has continuously operated the demonstration for the purpose of selecting a cost- and mission-effective method of paying insurance claims and disposing of acquired notes or properties under the FHA Single-Family

¹ See 12 U.S.C. § 1710(a) & (g).

insurance programs. Section 204 grants FHA discretion to implement a range of disposition alternatives. This statutory provision provides FHA the flexibility to consider and make adjustments based upon current market and economic factors and conditions. Exercising this authority helps to effectively manage FHA's defaulted assets and minimizes losses to the MMIF, thereby helping to satisfy the Secretary's fiduciary duty to preserve the insurance fund.

By notice published in the Federal Register on February 5, 2002, FHA announced its intention to establish the ACD Demonstration to "address any programmatic concerns" and "assess its success and determine whether to implement the ACD process on a permanent basis, throughout the country."² As stated in the notice, "[m]ortgagee participation in the ACD [demonstration] is voluntary," and interested persons could submit comments.³ Approximately eight months after publishing the February 5, 2002 Notice, FHA published an additional notice responding to public comments and conducted its first sale of defaulted mortgages through the ACD Demonstration.⁴

On June 5, 2006, FHA issued an Advance Notice of Proposed Rulemaking ("ANPR") that solicited public comment "on HUD's ACD program before HUD proceeds to issue a proposed rule that will commence the rulemaking process that will result in the codification of the requirements for the ACD program."⁵ The ANPR solicited public comments in an effort to make "possible improvements to the program," including the most efficient way to "maximize the return to the FHA insurance fund" by "minimiz[ing] the time an asset is held."⁶ On April 30, 2007, FHA published a regulatory agenda providing public notice that FHA had withdrawn the

² See FR-4691-N-01, Notice of FHA Accelerated Claim Disposition (ACD) Demonstration, 67 FR 5418 (February 5, 2002).

³ *Id.*

⁴ See Notice of FHA Accelerated Claim Disposition Demonstration, 67 FR 66038 (October 29, 2002).

⁵ See Accelerated Claim and Asset Disposition (ACD) Program; Advanced Notice of Proposed Rulemaking, 71 FR 32392 (June 5, 2006).

⁶ *Id.*

ANPR effective March 1, 2007.⁷ Rather than proceed to rulemaking at that time, FHA adopted additional modifications to the demonstration, including changing the disposition method from joint venture to whole note sales.

II. This Document

FHA is considering notice-and-comment rulemaking to transition the Program from a demonstration to a permanent program. Accordingly, FHA is evaluating potential modifications to the Program to manage FHA's defaulted assets and minimize losses to the MMIF, thereby helping to satisfy the Secretary's fiduciary duty to preserve the insurance fund. The Program goals are to ensure that FHA's public policy objectives are addressed and that returns to the MMIF from the claim payment and final disposition of each asset are maximized.

A key objective of potential changes to the Program is to continue to provide flexibility for the management of defaulted notes. Without the Program, after conducting loss mitigation, lenders in most cases would be required to foreclose the defaulted loans to perfect an insurance claim. If the properties could not be sold to a third party at foreclosure or a second-chance auction, the lender would be required to convey the property to FHA in order to be paid a mortgage insurance claim, incurring legal and holding costs that increase the financial cost to FHA through claim payment. Properties conveyed to FHA would increase FHA's REO inventory, posing an additional financial burden on FHA for asset management costs. Disposing of delinquent loans shortens the period between default and claim payment, reducing the financial exposure to the MMIF for costs incurred after default. Implementing the Program as a permanent program will enable FHA to better manage the claims process for defaulted loans,

⁷ See HUD Semiannual Regulatory Agenda, 72 FR 22694 (April 30, 2007).

establish a permanent, efficient disposition structure for loans, and reduce the overall financial exposure of the MMIF.

Comments received in response to this notice will inform FHA on potential options to improve program participation, performance, and enforcement. The objective of seeking comments is to gather input from the public that will be used to review current single family forward note sale program requirements, including those pertaining to asset eligibility, the assignment claims process, loan delivery, sale structure, purchaser requirements, and enforcement mechanisms. This information will be applied to develop a regulatory framework for single family forward note sales that provides clarity about the requirements and objectives of the Program for all participants and stakeholders.

Separate from single family forward note sales, the Department has conducted four competitive sales of HUD-Held Home Equity Conversion Mortgages (HECMs) as part of the HUD-Held Vacant Loan Sales. The loans sold in these offerings have been confirmed to be vacant and all borrowers, co-borrowing spouses, or non-borrowing spouse have been confirmed to be deceased. These sales were pursuant to section (d) of Public Law 105-276 (1998), codified at 12 U.S.C. 1710(g), and pursuant to section 255 of the National Housing Act (12 U.S.C. 1715z-20).

Each of these sales were announced via separate Federal Register Notice and were publicly advertised.⁸

III. Request for Public Comment

This notice offers the opportunity for the public to provide information and recommendations on the design of a permanent Single-Family Loan Sale Program, including

⁸ See 81 FR 84610 (November 23, 2016); 82 FR 26708 (June 8, 2017); and 83 FR 9533 (March 6, 2018).

asset eligibility, the assignment claims process, loan delivery, sale structure, purchaser requirements, and enforcement mechanisms. FHA will consider all public comments received and subsequently issue a proposed rule. At that time, FHA will accept further public comments on the proposed permanent program structure. FHA is particularly interested in public comments addressing the following issues:

3.0 Obstacles, Benefits, and Drawbacks

3.0.1 FHA Single Family Loan Sale Servicers

(1) What obstacles exist to participation in the Program and how can those obstacles be addressed?

(2) What factors are relevant to the decision to submit loans for claim payment through the Program versus alternative assignment options?

(3) What, if any, monetary costs have been or will be incurred through program participation, including but not limited to, administrative and overhead costs?

(4) What challenges have been or will be encountered in assigning and delivering loans to the Program?

(5) What are the benefits to participating in the Program?

a. Are any measurements available with respect to benefits from the Program?

b. Were there any unanticipated benefits from participation in the Program?

(6) What are the greatest drawbacks involved in participating and filing assignment claims through the Program?

a. Are any metrics available that should be collected to track drawbacks?

b. How and why, if at all, have any program participants changed, modified, or discontinued participation due to unanticipated consequences or drawbacks?

3.0.1.1 Administrative Issues

(1) Resources:

- a. What FHA-supplied resources or assistance (e.g. program support) do servicers require for participation in the Program as an alternative claim payment mechanism?
- b. What resources would be helpful?

(2) Planning process:

- a. Beginning with the initial planning phase, what amount of time is needed by servicers to implement any necessary changes in procedures, protocols, computer programs, or technology platform, etc., to enable participation in the Program?
- b. What are the steps in the process and how long will each take?

(3) Administrative obstacles:

- a. What administrative obstacles exist to participation in the Program (e.g., reallocation of personnel and resources, reprogramming and reconfiguration of computer and other systems)?
- b. How can those obstacles be addressed?

(4) Post-Sale Servicing considerations:

- a. What obstacles were encountered in servicing loans post-sale?

3.0.2 FHA Single Family Loan Sale Bidders & Purchasers

(1) What loan characteristics are most desirable in the loans offered through the Program?

(2) What type of loan pooling are most desirable for the loans offered through the Program?

- (3) Were the due diligence materials supplied in the past sales satisfactory?
- (4) What additional due diligence materials would be helpful?
- (5) What amount of time is needed by bidders to evaluate due diligence materials to enable participation in the Program?
- (6) What are the greatest obstacles for someone interested in purchasing notes?
 - a. What sorts of entities have the actual capacity to purchase and service notes and has that population changed over the Program's existence?
 - b. Has purchaser eligibility, based on requirements imposed by FHA, been an issue?
 - c. What are the benefits and drawbacks of partnership participation in the Program (e.g. for-profit purchasers partnering with nonprofits)? Should the Program do more to facilitate such partnerships?

Post-Sale Servicing

- (1) Post-sale considerations:
 - a. Were obstacles encountered servicing loans post-sale?
 - b. What were the strategies used for loan disposition following purchase and which proved successful?
- (2) What changes, if any, should FHA consider to purchaser performance reporting requirements (e.g., reporting on borrower outcomes)? What are the expected benefits and trade-offs of such changes?

3.1 Community Impacts

- (1) What benefits has the Program provided communities?
- (2) What, if any, adverse effects has the Program had on communities?

(3) What changes, if any, in the sale structure, loan eligibility criteria, or post-sale requirements on purchasers would improve community impacts? What are the policy trade-offs (e.g. potential adverse impact on bid pricing) of such changes?

3.2 Other Comments

In addition to the subject areas described above, FHA welcomes any other input that interested parties believe would contribute to the successful design and permanent implementation of the Program.

Dated: April 17, 2019

John Garvin
General Deputy Assistant Secretary for
Housing

[BILLING CODE: 4210-67]

[FR Doc. 2019-09124 Filed: 5/3/2019 8:45 am; Publication Date: 5/6/2019]